

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JERELL HAYNIE,)	
)	
Petitioner,)	8:17CV498
)	
v.)	
)	
UNITED STATES OF AMERICA,)	MEMORANDUM AND ORDER
)	
Respondent.)	
_____)	

Pending before me is a petition for writ of habeas corpus explicitly brought under 28 U.S.C. § 2241. Petitioner attacks his pending federal criminal prosecution in this court bearing number 8:15CR343. That case is now being tried by Judge Bataillon.

I construe the petition under the provisions of [28 U.S.C. § 2241\(c\)\(3\)](#). I conduct an initial review of the petition under [28 U.S.C. § 2243](#). Moreover, [Rule 1\(b\)](#) of the *Rules Governing Section 2254 Cases in the United States District Courts* allows me to apply [Rule 4](#) of those rules to a [section 2241](#).

I now dismiss the petition without prejudice. *See, e.g., Horning v. Sefart*, 107 F.3d 11 (6th Cir. 1997) (table) (“[T]he grounds upon which the right to the writ are asserted are, in substance, defenses to Horning’s criminal prosecution. It appears from the record that Horning, at the time she filed her petition, had not been tried on the indictment for which she was charged. The habeas petition was properly dismissed as that remedy cannot be invoked to raise defenses to a pending federal criminal prosecution. *See, e.g., Jones v. Perkins*, 245 U.S. 390 (1918); *Riggins v. United States*, 199 U.S. 547, 548-50 (1905); *Ex parte Finn*, 16 F.Supp. 1 (E.D.Ky.1936).”)

Although Petitioner sought relief under 28 U.S.C. § 2241, he must obtain a certificate of appealability if he wishes to appeal. See [28 U.S.C. § 2253](#); [Fed. R. App. P. 22\(b\)\(1\)](#); [Rule 1\(b\)](#) and [Rule 11\(a\)](#) of the *Rules Governing Section 2254 Cases in the United States District Courts*. The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in [Slack v. McDaniel](#), 529 U.S. 473, 484-485 (2000). The court has applied the appropriate standard and determined that Petitioner is not entitled to a certificate of appealability.

IT IS ORDERED that the petition for writ of habeas corpus (filing no. 1) is denied and dismissed without prejudice. No certificate of appealability has been or will be issued. Judgment will be entered by separate document.

DATED this 13th day of February, 2018.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge